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# Horne v. Paulos : Brief in Opposition to Certiorari

Utah Supreme Court

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James E. Morton; Ronald C. Wolthuis; Hatch, Morgan & Skeen; Attorneys for Plaintiff-Petitioner. J. Anthony Eyre; Kipp and Christian P.C.; Attorney for Defendant/Respondent.

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DOCKET NO:

UTAH SUPREME COURT

BRIEF

890303

IN THE SUPREME COURT OF THE STATE OF UTAH

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DR. JONATHAN HORNE,	:	
Plaintiff-Petitioner	:	
vs.	:	
DR. LONNIE E. PAULOS,	:	NO. 890303
Defendant-Respondent.	:	

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BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI

---

PETITION FOR WRIT OF CERTIORARI  
FROM THE COURT OF APPEALS

---

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Attorney for  
Defendant-Respondent.

**FILED**  
AUG 14 1989

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Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

---

DR. JONATHAN HORNE,	:	
Plaintiff-Petitioner	:	
vs.	:	
DR. LONNIE E. PAULOS,	:	NO. 890303
Defendant-Respondent.	:	

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## **STATEMENT OF JURISIDITION**

The Court of Appeals entered an Order of Affirmance on June 13, 1989, in accordance with the provisions of Rule 31, Rules of the Utah Court of Appeals. From the foregoing Order, the Plaintiff has filed a Petition for Writ of Certiorari with the Supreme Court of Utah in accordance with the provisions of Rules 42-48, Rules of the Utah Supreme Court.

## **QUESTIONS PRESENTED FOR REVIEW**

A. Whether the District Court and the Court of Appeals correctly held that Defendant, Dr. Lonnie Paulos (Dr. Paulos), owed no legal duty to Plaintiff, Dr. Jonathan Horne (Plaintiff) in connection with the examination which Dr. Paulos performed of Plaintiff's former patient and in communicating the results of his findings to the patient and the patient's attorney.

B. Whether the District Court and the Court of Appeals correctly held that Plaintiff's claim against Dr. Paulos for "injurious falsehood" is governed by the one-year statute of limitations contained in Section 78-12-29, U.C.A.

## DECISION OF THE COURT OF APPEALS

The case was heard by the Court of Appeals in accordance with the provisions of Rule 31, Rules of Utah Court of Appeals. On June 13, 1989, the Court of Appeals entered an Order of Affirmance which upheld the Summary Judgment in favor of Dr. Paulos.

### CONTROLLING STATUTE

The statute of limitations contained in Section 78-12-19, U.C.A., is controlling and provides as follows:

Within one year:

\*\*\*

(4) an action for libel, slander, assault, battery, false imprisonment or seduction. . . .

### STATEMENT OF THE CASE

#### A. NATURE OF THE CASE.

This is an action for damages which Plaintiff claims to have sustained as a result of the alleged professional negligence on the part of Dr. Paulos in examining Plaintiff's former patient and in the statements which Dr. Paulos made to the patient and the patient's attorney. The Plaintiff claims that the alleged

professional negligence on the part of Dr. Paulos precipitated a medical malpractice lawsuit against him which caused damage.

**B. COURSE OF PROCEEDINGS.**

**1. DISPOSITION BY DISTRICT COURT**

After preliminary discovery was undertaken, Dr. Paulos filed a Motion for Summary Judgment. The District Court granted Summary Judgment in favor of Dr. Paulos holding as follows:

1. Dr. Paulos owed no legal duty to the plaintiff in connection with his examination of plaintiff's former patient or the statements made to her attorney.

2. Plaintiff's claim for "injurious falsehood" is a claim based upon libel and/or slander which is barred by the one-year statute of limitations contained in Section 78-12-29. U.C.A.

**2. DISPOSITION BY COURT OF APPEALS**

The Court of Appeals, on its own motion, heard the case in accordance with the provisions of Rule 31, Rules of Utah Court of Appeals and entered an Order of Affirmance which upheld the Summary Judgment in favor of Dr. Paulos.



### C. STATEMENT OF FACTS.

The facts which give rise to the case are in summary as follows:

1. June, 1982 -- Plaintiff provided medical care to Teresa Ilene White (Ms. White) at Cottonwood Hospital for injuries she sustained in an auto/pedestrian accident, which injuries included a fracture of her right leg. (See First Amended Complaint, Para. 5 - 8, R. 7 -11; Amended Answer, Para. 2 and 3, R. 18 - 23; Plaintiff's Responses, No. 1a., R. 95 -111.)

2. Subsequent to the discharge of Ms. White from the Hospital, she developed alignment deformities of her right leg. Ms. White became displeased with the condition of her leg and consulted Dr. Paulos. (See First Amended Complaint, Para. 9 and 10, R. 7 - 11; Amended Answer, Para. 15, R. 18 - 23; Plaintiff's Responses, No. 1a., R. 95 - 111.)

3. October 10, 1983 -- Dr. Paulos examined Ms. White for the purpose of evaluating the condition of her right leg. (See First Amended Complaint, Para. 10, R. 7 - 11; Amended Answer, Para. 5, R. 18 - 23; Plaintiff's Responses, No. 1a., No. 2a., R. 95 - 111.)

4. Ms. White was contemplating bringing a medical malpractice lawsuit against Plaintiff and had consulted with an attorney to represent her in connection with this

claim. Ms. White's attorney requested that Dr. Paulos provide him with reports concerning her condition and the cause of the same. Dr. Paulos complied with this request and the letters written by him upon which the claims are based are as follows:

October 25, 1983 -- copy attached as Appendix C-1

December 6, 1983 -- copy attached as Appendix C-2

April 2, 1984 -- copy attached as Appendix C-3

(See Plaintiff's Response, No. 2a, R. 95 - 111).

5. October 23, 1987 -- Plaintiff initiated legal action against Dr. Paulos and has asserted the following claims:

**FIRST CAUSE OF ACTION (NEGLIGENCE)**

14. Defendant negligently evaluated the professional services of plaintiff which negligent evaluation was the actual and proximate cause of harm suffered by plaintiff.

**SECOND CAUSE OF ACTION (INJURIOUS FALSEHOOD)**

17. The statements made by defendant relative to the alleged professional negligence of plaintiff was false and published to third persons. (See First Amended Complaint, Para. 13 - 18, R. 7 - 11).

## ARGUMENT

### POINT I.

#### DR. PAULOS OWED NO LEGAL DUTY TO THE PLAINTIFF

As indicated in the foregoing Statement of Facts, the Plaintiff claims that Dr. Paulos was guilty of professional negligence in his evaluation of the condition of Plaintiff's former patient; and that this evaluation caused Plaintiff damage as a result of the medical malpractice lawsuit which was filed against him.

As an elementary principle of tort law, maintenance of a cause of action based upon negligence requires four fundamental elements:

The elements of an action for negligence include: (1) a duty of reasonable care owed by defendant to plaintiff; (2) a breach of that duty; (3) causation, both actual and proximate of the injury; and (4) damages suffered by plaintiff.

Martin v. Mott, 744 P.2d 337, 388 (Utah App. 1987). See, also, Williams v. Melby, 699 P.2d 723 (Utah 1985); Bach v. University of Utah, 726 P.2d 413 (Utah 1986); and DCR, Inc. v. Peak Alarm Co., 663 P.2d 433 (Utah 1983).

The claims asserted by Plaintiff have no legal foundation and were reviewed and rejected by the court in Kahn v. Burman, 673 F.Supp. 210 (E.D. Mich. 1987). The facts in Kahn are virtually identical to the facts in the instant case in that a physician who was a defendant in a

medical malpractice action brought an action against plaintiff's expert asserting claims of negligence, fraudulent and innocent misrepresentation, defamation, and intentional infliction of emotional distress. The claims were based upon the reports prepared by the expert and upon his deposition testimony. The Court, adjudicating the negligence claim, held as follows:

This delineation of a witnesses' duty makes it apparent that Dr. Burman, as a consultant and potential witness and ultimately an expert witness, owed no legal duty to Dr. Kahn, an adverse litigant.

Utah has long recognized that the duty of a professional such as a physician or attorney runs to the patient or client and not to third parties. This principle was set forth by the Supreme Court of Utah in the case of Hughes v. Housley, 599 P.2d 1250 (Utah 1979). In Hughes, the client brought an action for legal malpractice against his first attorney; the first attorney filed a Third-Party Complaint against the second attorney. The Supreme Court affirmed the dismissal of the Third-Party Complaint and stated as follows:

A finding of negligence required the presence of certain elements, one of which is a duty running between the parties. It is apparent from the facts of this controversy that no duty ever arose between the parties. Had Housley [the first attorney] been Cotro-Manes' [the second attorney] client, then Cotro-Manes would have had a duty to Housley.

Cotro-Manes' client, however, was Hughes [the plaintiff]. It has long been held, with few exceptions not applicable here, that the obligation of an attorney is to his client and not a third party (emphasis added).

Additionally, the Court in Kahn, supra, held that the expert's reports were relevant to the judicial proceedings and, therefore, subject to absolute protection under the "Witness Immunity" doctrine:

Physicians' reports are so inextricably intertwined with medical malpractice actions that it would be illogical to hold that such reports are not "relevant" to the underlying judicial proceedings [citations omitted]. To hold otherwise would defeat the purpose of witness immunity, which is to ensure that the judicial process functions "unimpeded by fear on the part of its participants that they will be sued for damages for their part in the proceedings." [citation omitted].

As a matter of policy, also, witness immunity should be extended to reports prepared by both potential and retained expert witnesses. . . .

The cases cited by Plaintiff for the proposition that no contractual relationship is required between a plaintiff and defendant to support an action based on negligence are inapplicable inasmuch as all of them involve claim for physical injury to person or property. (These cases are contained on pages 5 and 6 of Plaintiff's Petition and will not be re-cited here as they have no application).

Plaintiff also asserts that his action can be

maintained based upon a claim of "negligence misrepresentation" which does not require privity between the parties. However, plaintiff's claim in the instant case lacks two essential elements of the tort of negligent misrepresentation which have been established by the Supreme Court of Utah as follows:

Where (1) one having a pecuniary interest in a transaction, (2) is in a superior position to know material facts, and (3) carelessly or negligently make a false representation concerning them, (4) expecting the other party to rely and act thereon, and (5) the other party reasonably does so, and (6) suffers loss in that transaction, the representor can be held responsible if the other elements of fraud are also present.

Christensen v. Commonwealth Land Title Ins. Co., 666 P.2d 302 (Utah 1983) (emphasis added). As can be seen by the Statement of Facts, the statements which Dr. Paulos made to Ms. White and her attorney were not made with the intent that Plaintiff would rely on the same nor does Plaintiff claim that he relied on such statements.

The thrust of Plaintiff's claim is that a professional who is retained as an expert consultant and/or witness owes a duty to the party whose conduct he is reviewing to act in a nonnegligent manner and asks this Court to create a new tort of "expert witness malpractice". Plaintiff cites no cases which support this novel cause of action and indeed no such cases have been

found. It is readily apparent that the creation of such a cause of action would give rise to a never ending cycle of lawsuits wherein the prevailing party would sue the expert consultants and/or witnesses retained by the opposing party in all cases where expert opinions were expressed that a professional had committed malpractice in his particular field. As Judge Richard Davidson euphemistically pointed out at the time of oral argument before the Court of Appeals, such a cause of action would create a substantial "growth industry" for the legal profession, which our society simply could not endure.

#### **POINT II.**

##### **PLAINTIFF'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS**

It is apparent from a review of Plaintiff's First Amended Complaint and Responses that the claim which he asserts is for libel and/or slander (defamation) notwithstanding his characterization of the same as an "injurious falsehood". Plaintiff bases his claim upon the statements which Dr. Paulos made to Ms. White and upon the letters which he wrote to her attorney. The relevant dates are, again, as follows:

October 10, 1983 -- examination.

October 25, 1983 -- letter to attorney.

December 6, 1983 -- letter to attorney.

April 2, 1984 -- letter to attorney.

October 23, 1987 -- legal action filed.

Plaintiff attempts to avoid the effect of the one-year statute of limitations by arguing that the claim is based on an "injurious falsehood" rather than defamation and that, consequently, the four year statute of limitations contained in Section 78-12-25, U.C.A. is applicable.

In Direct Import Buyers' Assoc. v. KSL, Inc., 538 P.2d 1040 (Utah 1975), the Court equated "injurious falsehood" with "slander of title" and "product disparagement" actions and noted:

The basis upon which plaintiff claims a right to recover is libel and slander, but it is actually for injurious falsehood. The principle of slander of title, while similar, is not quite the same, for in this case there is no disparagement of plaintiff's title. It is merely a depreciation of the quality of plaintiff's product.

538 P.2d at 1042, see also Jack B. Parson Companies vs. Nield, 751 P.2d 1131 (Utah 1988). The facts of this case cannot support an action for "slander of title" or "product disparagement". The plaintiff's mislabeling of his claim while imaginative does not change the true character of the same and has no substantive legal effect.

Further, the great weight of authority is that even if Plaintiff's action is characterized as one for injurious falsehood, it is still governed by the statute of



limitations relating to defamation actions. Plaintiff cites Idaho Norland Corp. v. Caelter Indus., Inc., 509 F.Supp. 1070 (D. Colo. 1981) in support of his position that a claim for injurious falsehood is not governed by the statute of limitations applicable to actions for defamation. However, in Idano Norland, the Court recognized that a majority of jurisdictions apply the statute of limitations for defamation to true claims for injurious falsehood. There is no logical reason to have a different statute of limitations applicable to claims for defamation and claims for injurious falsehood, and in recognizing this, the Oregon Supreme Court succinctly concluded:

We can see no substantial reason why the legislature would make any distinction between an action involving defamation of title to property and one based upon defamation of the person. A study of the historical development of the statute of limitations in this state confirms us in the view that the limitation as to the commencement of action for libel and slander is the same whether the slander involves property or the person.

Woodward v. Pacific Fruit Produce Co., 106 P.2d 1043, 1046 (Or. 1940).

The Plaintiff's action, whether it be deemed "defamation" or "injurious falsehood" is subject to the one-year statute of limitations and is untimely.

### CONCLUSION

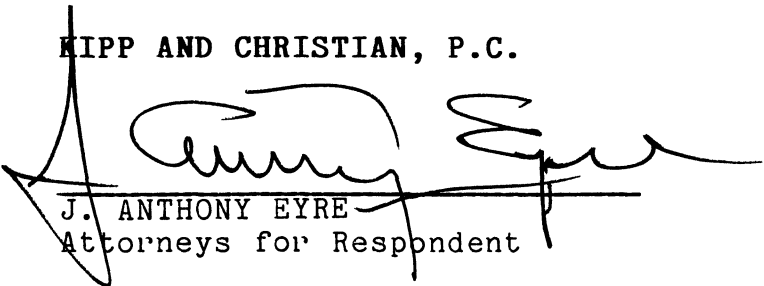
The District Court and the Court of Appeals correctly held that Dr. Paulos owed no legal duty to the Plaintiff and that his action based upon "negligence" cannot be maintained. Further, Plaintiff did not and could not have relied upon the statements made by Dr. Paulos and, thus, no cause of action for "negligent misrepresentation" arose.

Plaintiff's claim for "injurious falsehood" is factually and legally one for libel and/or slander and the District Court and Court of Appeals correctly held that it was subject to the one-year statute of limitations.

The Petition for a Writ of Certiorari should be denied.

RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of August, 1989.

KIPP AND CHRISTIAN, P.C.



J. ANTHONY EYRE  
Attorneys for Respondent

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 11 day of August, 1989, 4 true and correct copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari, were mailed to the following:

James E. Morton  
Ronald C. Wolthuis  
HATCH, MORTON & SKEEN  
1245 Brickyard Road, Suite 600  
Salt Lake City, Utah 84106

\_\_\_\_\_

## **APPENDIX**

Tab A

FILED

JUN 13 1989

*Allyson*  
Clerk of the Court  
Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

-----oo0oo-----

Dr. Jonathan Horne,	)	
	)	
Plaintiff and Appellant,	)	ORDER OF AFFIRMANCE
	)	
v.	)	Case No. 880461-CA
	)	
Dr. Lonnie E. Paulos,	)	
	)	
Defendant and Respondent.	)	

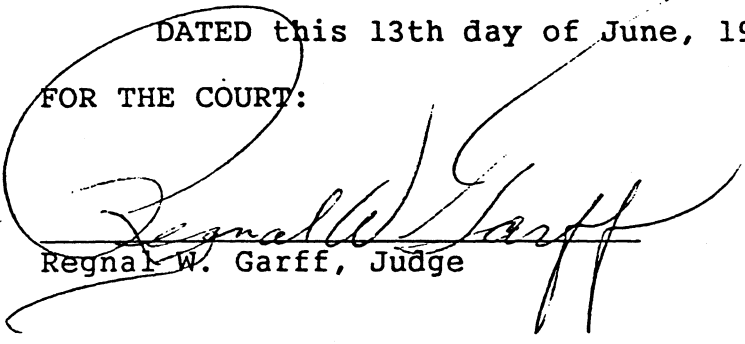
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Before Judges Garff, Davidson and Croft (Retired District Judge  
Sitting by Special Assignment) (On Rule 31 Hearing).

The summary judgment of the district court is affirmed.

DATED this 13th day of June, 1989.

FOR THE COURT:

  
Reginal W. Garff, Judge

Tab B

FILED IN CLERK'S OFFICE  
SALT LAKE COUNTY, UTAH

JUN 15 1988

RECEIVED IN CLERK'S OFFICE  
BY \_\_\_\_\_

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

---

DR. JONATHAN HORNE,	:	
Plaintiff,	:	SUMMARY JUDGMENT IN FAVOR
	:	OF DR. LONNIE E. PAULOS
vs.	:	
DR. LONNIE E. PAULOS,	:	Civil No. C87-6961
Defendant.	:	Judge Leonard H. Russon

---

The Motion for Summary Judgment of Defendant Dr. Lonnie E. Paulos came on for hearing before Judge Leonard H. Russon on May 23, 1988; plaintiff, Dr. Jonathan Horne (Dr. Horne), being represented by his attorney, James E. Moreton; defendant, Dr. Lonnie E. Paulos (Dr. Paulos), being represented by his attorney, J. Anthony Eyre; the Court having considered the record of the case, including the Memoranda of the parties, having heard the arguments of counsel and having concluded that Dr. Paulos had no legal duty to the plaintiff, Dr. Horne, with respect to



the evaluation by Dr. Paulos of the medical services provided by Dr. Horne to Teresa Ilene White and thus the claim for negligence cannot be legally made; the Court having further concluded that the plaintiff's claim for "injurious falsehood" is a claim based upon liable and/or slander and the statements giving rise to the claim were published more than one year prior to the time the action was commenced;

Now therefor, IT IS HEREBY ORDERED that the Motion for Summary Judgment of defendant, Dr. Lonnie E. Paulos, is granted and the Amended Complaint of the plaintiff, Dr. Jonathan Horne, against defendant, Dr. Lonnie E. Paulos, is dismissed with prejudice.

DATED this 14 day of June, 1988.

BY THE COURT:

1s/ Leonard H. Russon  
LEONARD H. RUSSON  
District Court Judge

CERTIFICATE OF MAILING

MAILED, postage prepaid, this 16<sup>th</sup> day of  
June, 1988, a true and correct copy of the foregoing Summary  
Judgment in Favor of Dr. Lonnie E. Paulos, to the following:

James E. Morton  
HATCH, MORTON & SKEEN  
Attorneys for Plaintiff  
1245 Brickyard Road, Suite 600  
Salt Lake City, Utah 84106

Lonnie E. Paulos

Tab C

October 25, 1983

Mr. Roger Sharp  
Suite 1030  
185 South State Street  
Salt Lake City, Utah 84111

RE: Teresa Ilene White

Dear Mr. Sharp:

On October 10, 1983 I saw Teresa Ilene White in the office for evaluation and second opinion. Teresa is a 16 year old white female who was involved in a serious auto-pedestrian accident in June, 1982. At that time she apparently suffered multiple injuries including a fracture-dislocation of her mandible, comminuted, both bone fracture of the right lower leg as well as a transverse both bone fracture of the left lower leg. Apparently the patient was taken to the Cottonwood Hospital Emergency Room where she was treated and referred to Dr. Horne for definitive treatment of her tibial fractures. Because the left fracture was open the patient was taken immediately to surgery. The left tibia was debrided, irrigated and an open reduction internal fixation with hardware used at that time. Apparently concomitant work was being done by Dr. Walker on facial lacerations and her mandibular fracture. At that time Dr. Horne did a closed manipulation of the fracture of the right tibia and a post-operative knee splint was applied. It was felt by Dr. Horne that a snug postoperative cast could not be used because of the severe swelling present. Also because of the multiple other injuries he elected closed reduction of this leg rather than open and felt as though he could hold the reduction through casting.

In reviewing postoperative x-ray readings by the Radiology Department at the Cottonwood Hospital, the closed reduction of the right tibia was successful and according to x-rays on June 29, 1982 axial alignment of that fracture with cortical apposition was present. The patient was subsequently discharged, to be followed by both Dr. Horne and Dr. Walker as an outpatient.

Between the patient's discharge and the end of July, 1982, the patient questioned the orthopedic care she was receiving and transferred the care of Teresa to Dr. Reed Fogg. Available to me were office notes from Dr. Fogg's chart. The first note being dated July 22, 1982. According to his notes Teresa had been placed in a long leg cast on the right following the closed reduction and immediately around the hospital discharge time. By August 31, 1982 Dr. Fogg's notes relate that the left leg has "complete healing". The right tibia which had been previously plated was also showing "good healing". The last note in Dr. Fogg's chart, dated March 1, 1983, states that Teresa is doing extremely well and walking almost without a limp. He felt as though further therapy was necessary and she was to return to see him in six weeks.

APPENDIX C1

-viii-

Page 2  
Dr. Roger Sharp

Since that time, according to Teresa's history, she has developed right knee problems with giving away episodes, recurrent pain and swelling in the knee and aching pain along the anterior medial tibia on the right. She feels as though her left tibia is essentially asymptomatic and her main problems now are her mandible and right lower leg. She also complains of the leg being "crooked" and that it "hyperextends" and "pops". She feels as though she has had to learn to walk in a different way and is displeased with the result thus far.

Physical examination demonstrates the patient to walk with a slightly antalgic gait to the right leg. No swelling is noted in the right knee. A recurvatum position as compared to the left knee is noted as well as an increased varus position. Crepitation is noted in the right subpatellar area slightly more than the left. Patellofemoral alignment, per se, is normal and normal laxity is present. There was no ligamentous instability noted in the knee or meniscal findings. There was a slight leg length discrepancy, left shorter than right, perhaps one-half inch. Muscle atrophy in both lower extremities consistent with the severity of the injury and subsequent treatment was noted.

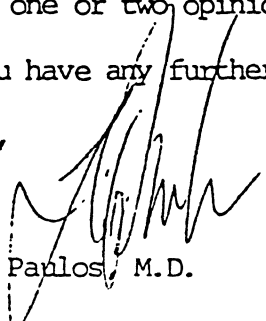
X-rays obtained of the right proximal tibia demonstrated 8 degrees of recurvatum and 15 degrees of varus secondary to the previous fracture and healing.

It is my opinion that the present position of the right tibia will lead to progressive right knee problems secondary to malposition. Although the amount of recurvatum present by itself could possibly be tolerated the 15 degrees of varus will not be. This type of positioning will lead to progressive deterioration and arthritis of the knee and should be surgically corrected sometime in the near future. I believe the present knee symptoms which Teresa White is suffering from are not only secondary to the significant trauma which she sustained in the auto-pedestrian accident and subsequent muscle atrophy but also secondary to the malposition of the tibial fracture fragments and serve as an early warning that surgical correction should be entertained in the near future.

While in the office, the patient's mother raised the issue of medical malpractice secondary to the right tibia position. As I explained to the patient and her mother medical malpractice is a legal issue which needs to be decided in a court of law. I can only state at this time that in my opinion, the present tibial position is not consistent with acceptable community standards. I, however, would encourage you to obtain several more opinions in that the treatment of tibial fractures is difficult at best and the surrounding issue of medical malpractice concerning tibial fractures should involve more than one or two opinions.

Should you have any further need for information please feel free to contact me.

Sincerely,

  
Lonnie E. Paplos, M.D.

REP/ml  
closure

Thomas D. Rosenberg, M.D.

December 6, 1983

Lonnie E. Paulos, M.D.

Mr. Roger T. Sharp  
Suite 1030  
185 South State Street  
Salt Lake City, Utah 84111

RE: Supplemental Information Regarding  
Teresa White

Dear Mr. Sharp:

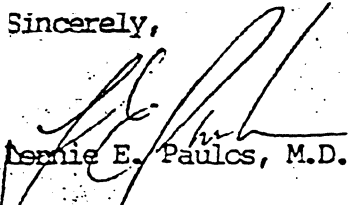
In response to your letter November 16th I am supplying the following information. The type of surgery which I have suggested to Miss White is a corrective osteotomy of the tibia. This would require approximately an hour to an hour and a half of surgery with a hardware fixation which then would subsequently have to be removed on a secondary surgery approximately a year to two years later. Concerning the question as the issue of future quality of realignment I am sorry that I cannot respond to this. I am not quite sure what you mean. Certainly the knee can be realigned so as to minimize further problems. As to the extent of damage that has occurred in the knee joint itself secondary to the malalignment cannot be assessed by physical examination alone. It is my feeling that in view of the short period of time between her accident and the time of this evaluation that the permanent damage to the knee is very slight.

The estimate of surgical costs would be in the neighborhood of \$5,000 for the first surgery and perhaps \$2,000 for the second surgery.

In response to the second paragraph of your letter I just wish to state that I feel Miss White's present alignment of her limb is unacceptable. I have explained to them that a realignment is necessary to preserve the proper functioning of the ankle and knee articulations in that extremity.

Should you need any further information please feel free to contact me.

Sincerely,

  
Lonnie E. Paulos, M.D.

LEP/ml

APPENDIX C2

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Thomas D. Rosenberg, M.D.

April 2, 1984

Lonnie E. Paulos, M.D.

Roger T. Sharp  
Attorney at Law  
Suite 1030  
185 South State St.  
Salt Lake City, Utah 84111

RE: Teresa White

Dear Mr. Sharp:

I apologize for the delay in returning my response to you but have been rather busy of late.

In specific response to your questions labelled a through h I am responding.

Question a. Was the medical management of Ms. White by her original treating physician acceptable for a specialist in orthopedic surgery?

I feel that the majority of her treatment was certainly acceptable and within the guidelines established in this medical community. She was left, however, with a permanent deformity of her right tibia which by these medical community standards as well as common orthopedic textbook standards is unacceptable.

Question b. What specific deviations in acceptable medical care do you believe occurred regarding this young girl?

I believe the acceptance of a malunion beyond those limits normally accepted by orthopedic surgeons for her right tibia fracture is a deviation from normal. I wish to stress to you however the need for one or two other opinions in this regard. As I mentioned to you on the telephone the treatment of tibial fractures is very difficult and many times requires the acceptance of less than perfect reduction. I believe that the amount of accepted deformity in Teresa White's right tibia is excessive but do feel several other opinions should be obtained to confirm my own.

Question c. What is the current physical condition of Ms. White's lower extremities.

I refer you to my letter of October 25, 1983 because I believe it answers this specifically.

Question d. What curative or remedial actions do you propose in an effort to correct Ms. White's current misalignment in her lower extremities?

I wish to correct that in that misalignment only occurs in the right extremity and not the left. I would propose that she will require a corrective osteotomy of the tibia with hardware fixation followed by a second procedure to remove the hardware. Probably

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Mr. Rogert T. Sharp

autogenous bone grafting will be required at this same setting.

Question e. What is the estimated cost for all hospital and medical expenses for this future corrective surgery?

I am only guessing, but I suspect that we will be talking in the neighborhood of \$10,000.

Question f. When do you recommend surgery for Mrs. White in the future?

As soon as possible.

Question g. Please estimate the type and degree of corrective alignment you expect in future surgery for Ms. White.

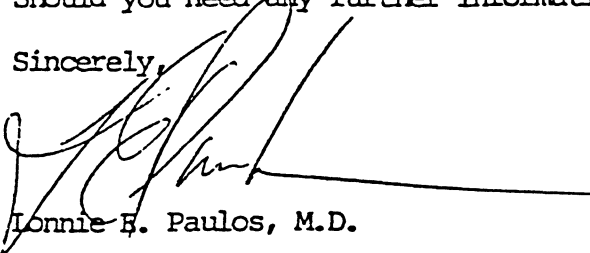
Obviously we expect to achieve normal alignment but what can be obtained will be dependent upon the conditions at surgery. Our plan will be to correct the large amount of varus and recurvatum which she presently has meaning a biplanar osteotomy. Biplanar osteotomies are difficult to perform and to control so the final obtained alignment will be dependent on the surgical outcome.

Question h. Based upon reasonable medical judgement what will be the extent of any residual problems for Ms. White because of her original inappropriate care?

At this time it is difficult to comment on this question. She has had intermittent knee problems and it is possible that an arthroscopic evaluation at the time of her tibia realignment will help assess any knee damage. Obviously knee damage can come from the severity of her previous accident as well as from the malalignment which is present in the tibia. I honestly believe that a majority of Ms. White's problems are probably a result of her original injury rather than mistreatment. The need for osteotomy and corrective surgery is to prevent ~~further~~ problems in the future.

Should you need any further information please feel free to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "L. B. Paulos", with a long horizontal line extending to the right.

Lonnie B. Paulos, M.D.

LEP/ml